
SUBJECT: Overview of Bill 197, COVID-19 Economic Recovery Act, 2020

PREPARED BY: Claudia Storto, City Solicitor and Director of Human Resources
Marg Wouters, MCIP, RPP, Senior Manager, Policy and Research, ext. 2909

RECOMMENDATION:

1. That the report entitled “Overview of Bill 197, COVID-19 Economic Recovery Act, 2020” be received;
2. And that staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

This report provides an overview of Bill 197, the *COVID-19 Economic Recovery Act, 2020*, (Bill 197), which was introduced on July 8, 2020 and received Royal Assent on July 21, 2020. The Bill amended 20 pieces of legislation with the stated objective of aiding in the recovery of the Ontario economy from the impacts of the COVID-19 pandemic. This report focuses on the amendments affecting planning and development in Markham, notably the changes to the *Planning Act* and *Development Charges Act* as well as the *Environmental Assessment Act* and the *Building Code Act*.

Through these amendments to the *Planning Act* and the *Development Charges Act* in Bill 197, the Province has made an effort to balance the municipal interests identified through the consultation process related to Bill 108.

The amendments discussed in this report generally support the needs of municipalities, providing additional flexibility and funding options, while creating transparency and increased certainty on financial matters for the development community. They include the addition/ reinstatement of eligible services for development charge recovery, maintaining parkland provisions and the flexibility of Community Benefit Charges (CBCs) as a tool to recover additional costs.

However, there are some elements of the Bill that remain unknown or could present challenges for municipalities. This includes the land value caps for CBCs which have yet to be identified. There will also be increased administration and costs for municipalities relating to the development of a CBC strategy and by-law as well as the potential for additional appeals to the Local Planning Appeals Tribunal (LPAT). It is anticipated that municipalities will be challenged to meet the requirement to allocate or spend 60% of funds collected through CBCs annually depending on the facilities or services they are

intended to be used for. Land values and acquisition processes, capital budget processes and procurement processes may impact timing and the ability to allocate/spend 60% of CBC funds.

The expansion of the use of the Minister's authority to pass zoning orders (MZOs) to include site plan approvals and set conditions in agreements is of concern as it is imperative that the use of planning instruments remain at the local level.

Staff will continue to monitor the implementation of Bill 197 and report back to Council on implementing regulations, once released by the Province.

PURPOSE:

This report provides an overview of Bill 197, the *COVID-19 Economic Recovery Act, 2020*, (Bill 197) particularly as it relates to planning and development and the impacts to the City of Markham.

BACKGROUND:

Bill 197 was introduced by the Ontario government on July 8, 2020 and received Royal Assent on July 21, 2020. The Bill amended 20 pieces of legislation with the stated objective of aiding in the recovery of the Ontario economy from the impacts of the COVID-19 pandemic. The Province describes the Bill as addressing three areas: restarting jobs and development, strengthening communities and creating opportunity for people.

This report focuses on the amendments affecting planning and development in Markham, notably the changes to the *Planning Act* and *Development Charges Act*, among other pieces of legislation. The amendments include changes to sections of the *Planning Act* and the *Development Charges Act* that had recently been amended through Bill 108, the *More Homes, More Choice Act, 2019* (Bill 108).

OPTIONS/ DISCUSSION:

The following provides an overview of the main pieces of legislation and the implications for Markham.

1. List of services eligible for development charges has been expanded, and 10% discount for soft services has been removed

The amendments to the *Development Charges Act* expand the list of eligible services for which development charges (DCs) can be collected, including new soft services, and clarify the relationship between those services and services to be covered by a community benefits charge (CBC) by-law. Moreover, DC eligible services will no longer be subject to a mandatory 10% discount for projects entirely driven by growth.

Table 1 identifies the list of eligible services. The eligible services added through Bill 197 bring back services removed under Bill 108 and now include libraries, long-term care, parks and recreation services, public health, child care and early years programs,

housing services, by-law enforcement services, and emergency preparedness. These services are now eligible for full DC funding as the 10% discount has been removed. Staff note that parking has been removed from DCs; however, Markham's collections for that service were nominal.

Table 1: Eligible Services for Development Charges (DCs)	
1	Water supply services, including distribution and treatment services
2	Waste water services, including sewers and treatment services
3	Storm water drainage and control services
4	Services related to a highway as defined in subsection 1 (1) of the <i>Municipal Act, 2001</i> or subsection 3 (1) of the <i>City of Toronto Act, 2006</i> , as the case may be
5	Electrical power services
6	Toronto-York subway extension, as defined in subsection 5.1 (1)
7	Transit services other than the Toronto-York subway extension
8	Waste diversion services
9	Policing services
10	Fire protection services
11	Ambulance services
12	Services provided by a board within the meaning of the <i>Public Libraries Act</i> *
13	Services related to long-term care*
14	Parks and recreation services, but not the acquisition of land for parks*
15	Services related to public health*
16	Child care and early years programs and services within the meaning of Part VI of the <i>Child Care and Early Years Act, 2014</i> and any related services*
17	Housing services*
18	Services related to proceedings under the <i>Provincial Offences Act</i> , including by-law enforcement services and municipally administered court services*
19	Services related to emergency preparedness*
20	Services related to airports, but only in the Regional Municipality of Waterloo*
21	Additional services as prescribed
	* Denotes new items not previously expressly DC eligible

The amendments update the transition provisions respecting when the new list of eligible services becomes effective and when an existing DC by-law will expire. DC by-laws will expire on the earliest of, the date they are repealed, the date a municipality passes a CBC by-law, and two years after the day the amendments come into force. There are also provisions for transition rules for the use of existing reserve funds by upper-tier municipalities for which charges can no longer apply.

Further, Bill 197 explicitly exempts second dwelling units in prescribed classes of new residential dwellings from DC charges.

Implications for Markham:

- The amendments to the *Development Charges Act* (and the *Planning Act* as discussed below) are positive as they generally uphold the principle of growth paying for growth. It is clear that the Province has made an effort to balance the municipal interests identified through the consultation process related to Bill 108.
- Growth-related studies that were removed under Bill 108 are returned to the DCs under Bill 197 and will enable Markham to continue funding planning studies, servicing studies and DC background studies.

- The removal of the 10% discount for soft services is positive for Markham and is expected to generate approximately \$3M per year of DC revenues for Markham.
- Bill 197 did not address the concern of municipalities regarding the freezing of DC rates at site plan application and zoning by-law amendment introduced through Bill 108. This provides the possibility for developers to freeze their rates for years before progressing to site plan approval and does not align the DC rates with the cost of growth-related infrastructure. Council in April 2020 approved a DC Interest Policy, which will mitigate some of the impact of the rate freeze.

2. Community Benefits Charge framework has been significantly revised; CBCs are now only applicable to higher density development and no longer include parkland dedication

Section 37 of the *Planning Act* respecting community benefits charge by-laws has been changed significantly from what was proposed in Bill 108. A municipality may still impose CBCs against lands to pay for capital costs of facilities, services and matters required because of development or redevelopment (growth-related items), but the CBC now only applies to higher density development (10 or more residential units or buildings or structures with five or more storeys). In addition, parkland dedication has been removed as a requirement of the CBC, and instead current *Planning Act* provisions for parkland and cash-in-lieu of parkland are maintained with important changes.

Municipalities may continue to pass Section 37 by-laws under the previous provisions until either a municipality passes a CBC by-law or two years after Bill 197 comes into force, whichever is earlier. Existing Section 37 agreements will continue to be grandfathered.

The amount of CBCs that may be collected will continue to be capped at a percentage of the value of the land being developed. The cap will be set through regulation, which has not yet been released. It is noted that, under Bill 197, CBCs may no longer be imposed or collected by upper-tier municipalities, as was proposed under Bill 108.

The valuation date to determine the quantum of CBC is the day before the building permit is issued or, if multiple building permits are required for a development or redevelopment, then the day before the first permit is issued. Payments under protest are permitted if there is a disagreement over the value of land. In the event of a disagreement, developers may provide municipalities with their own appraisals to initiate further review with an outside appraiser. The municipality may accept in-kind contributions for facilities or services in a CBC by-law in lieu of a payment with the value of those services deducted from the CBC amount owed.

The amendments clarify the relationship between charges under a CBC by-law and a DC by-law. The amendments state that for greater certainty, nothing in the *Planning Act* prevents a CBC from being imposed with respect to land for park or other public

recreational purposes or with respect to the services listed in the *Development Charges Act*, provided that the capital costs that are intended to be funded by the CBC are not capital costs that are intended to be funded under a DC by-law, or from the special account used for cash-in-lieu of parkland collected pursuant to Section 42 of the *Planning Act*.

Prior to passing a CBC by-law, a municipality must develop CBC strategies identifying the facilities, services or other items that will be funded with the charges ahead of their receipt. Municipalities must consult on both the strategies and the by-laws before either is passed. CBC by-laws may be appealed to the LPAT.

Bill 197 also sets out that the municipality must spend or allocate 60% of CBCs in an account by the year's end. The City will not be able to collect CBCs for parkland or services that the City collected under Section 42 or through development charges. Annual reports will be required to publicly account for money received through CBCs.

Implications for Markham:

- The changes are generally positive in that they support the needs of municipalities, providing additional flexibility and funding options, while creating financial transparency and increased certainty for the development community. They include the addition of eligible services for DC recovery, the maintenance of parkland provisions and the flexibility of CBCs as a tool for the provision of community benefits in areas with high-rise development.
- Depending on the land value caps set for CBCs, the City may still find it challenging to ensure that growth fully pays for growth.
- There will likely be increased administration and cost for municipalities relating to the development of a CBC strategy and by-law, as well as the likelihood of additional LPAT appeals.
- A significant concern is that municipalities will find it challenging to meet the requirement to spend 60% of funds collected through CBCs annually depending on the facilities or services they are intended to be used for. During times of continued low development activity, municipalities will not be able to accumulate enough CBC funds and enough funds may not be available in a given year for appropriate expenditures. This will be a significant issue in areas with higher land values, such as Markham. Land values and acquisition processes, capital budget processes and procurement processes may impact the City's ability to spend 60% of CBC funds collected.
- The financial implications are as yet unknown as the percentage of land value at which the CBC will be capped has not yet been determined.

3. Parkland dedication is separated from community benefits charge; alternative rate parkland dedication by-law is now appealable to LPAT

Bill 197 permits parkland to continue to be collected by way of alternative rates of up to one hectare per 300 units for land, or up to one hectare per 500 units for cash-in-lieu of parkland, all in accordance with Section 42 of the *Planning Act*. The amendments and new appeal mechanism are similar to the process required for a municipality to pass a DC by-law. Section 42 has been amended regarding the requirements for a parkland dedication by-law to include a requirement for public consultation before a by-law is passed, and to allow appeals of the by-law to the LPAT.

The LPAT has broad powers in an appeal of a parkland dedication by-law, including the powers to reduce the alternative rate. However, in an appeal, the LPAT is not permitted to:

- a) increase the amount of parkland that will be required to be conveyed or payment in lieu that will be required to be paid in any particular case;
- b) add or remove, or reduce the scope of, an exemption provided in the by-law; or
- c) change the date, if any, the by-law will expire.

The Bill 197 amendments also outline how refunds are to be provided after a successful appeal.

Existing parkland by-laws establishing an alternative rate will expire two years following Bill 197 coming into effect. Accordingly, municipalities will have two years to pass a new parkland dedication by-law if they wish to continue charging an alternative rate. Markham currently applies the alternative rates of 1 ha per 300 units (capped at 1.214 ha per 1,000 people) for land dedication, and 1 ha per 500 units for cash-in-lieu of parkland.

A municipality will only be permitted to exercise its authority under Section 42 if neither its CBC by-law nor its DC by-law include provisions dealing with the funding of capital costs for parkland purposes.

Implications for Markham:

- The maintenance of current parkland provisions, including the alternative parkland rate, in the *Planning Act* is positive, to ensure that sufficient parkland is achievable for new communities and particularly those containing high density development. Previously, the regulations pursuant to Bill 108 proposed to cap parkland dedication at 10% of land value, which would have resulted in a drastic reduction of parkland service levels.
- Markham had initiated a parkland study to update its parkland dedication by-law prior to Bill 108, but paused work on the study after Bill 108 was enacted. As a result of Bill 197, the parkland study will be resumed, and a new parkland acquisition by-law will need to be finalized within two years.

- Additional potential LPAT appeals.

4. **Potential for more Provincial development approvals through Minister's Zoning Orders and Office of Provincial Land Facilitator**

Currently, under Section 47 of the *Planning Act*, the Minister may make orders exercising zoning powers (i.e., Minister's Zoning Orders or MZO's). The Bill 197 amendments give the Minister enhanced order-making powers for specified lands outside of the Greenbelt Area.

The enhanced order-making powers include powers in relation to site plan control and inclusionary zoning. Among other things, the Minister may make orders related to site plan control, including an order that site plan control does not apply in respect to all or part of specified land. The Minister will also have the ability to require the inclusion of affordable housing units in the development or redevelopment of specified lands, buildings or structures.

Among other things, a Minister's order relating to specified land may also require that the owner of the specified land enter into an agreement with the relevant municipality respecting specified matters related to development on the land and conditions required for the approval of plans and drawings in a site plan control area. The amendments provide that the Minister may give direction to the parties concerning the agreement. An agreement is of no effect to the extent that it does not comply with the Minister's direction, whether the Minister's direction is given before or after the agreement has been entered into.

In the past, the Province has from time to time appointed a Provincial Land Facilitator to help resolve contentious planning issues. Bill 197 formalizes the office of the Provincial Land and Development Facilitator through amendments to the *Ministry of Municipal Affairs and Housing Act*. The Minister will appoint the Provincial Land Facilitator who will make recommendations to the Minister in respect of growth, land use and other matters of Provincial interest and perform other functions as the Minister may specify.

Implications for Markham:

- The enhanced powers for Minister's Zoning Orders is of concern. The use of planning instruments such as Official Plans and zoning by-laws, and the involvement of the public in a transparent process is paramount to the achievement of planning outcomes that represent local community input and reflect the community's vision. The Province can be supportive by providing timely comments and permits (such as Ministry of Transportation approvals) while still respecting local planning processes.
- The expansion of the use of the Minister's authority to include site plan approvals and to set conditions in development agreements is also of concern as these are matters that are best left to the local municipality.

- The permanent Provincial Land Facilitator function could be a positive tool for managing issues before LPAT and resolving matters in a timely manner provided local municipalities are invited to fully participate in the process.

5. Transit Development

Bill 197 will allow the Province to designate lands around priority transit projects as 'transit-oriented community land'. Within these designated areas, the Province will now have more powers to directly support the development of these lands. Bill 197 permits the Province to enter into business arrangements, partnerships and joint ventures for the development of 'transit-oriented community projects'. The Province will also have increased powers to acquire lands without triggering certain provisions of the *Expropriations Act*.

Implications for Markham:

- The Yonge North Subway Extension is identified as a priority transit project. The possibility for designating 'transit-oriented community lands' around new stations along the corridor improves the potential that subway stations in Markham could be built through partnerships and joint ventures between landowners and other parties including the Province allowing for fully integrated development with the subway system.

6. Environmental Assessments (EAs) to be streamlined and accelerated

The Bill amends the *Environmental Assessment Act* and reflects several of the proposed changes in the Modernizing Ontario's Environmental Assessment Program released in 2019. Currently many routine projects are assessed through a Class Environmental Assessment (Class EA) process, which will be replaced with a 'streamlined environmental assessment process' to be set out through regulations. The Minister's ability to require a project to undergo a full individual EA will also be subject to a time window. Further, members of the public may no longer request that a Class EA be subject to an individual EA process except where it may impact aboriginal treaty rights.

Other changes to the EA process include requiring municipal support for the establishment of a landfilling site; providing for a 10-year expiry date for EA approvals; and requiring Minister's orders to be made within 30 days of the comment period.

The legislation also eliminates hearings of necessity under the *Public Transportation and Highway Improvement Act* for expropriations allowing the Minister to establish an alternative process to receive comments from property owners.

Implications for Markham:

- The process for EA approval of future Markham projects may be more streamlined and proceed with more timeline certainty, particularly for projects that are controversial.

- There is potential that the new 10-year expiry timeframe for individual EAs may impact existing or future Markham or York Region projects.

7. Electronic participation in municipal council and local board meetings will continue

Municipal councils and local boards will be able to continue to meet electronically. Elected offices will be allowed to vote by proxy where authorized by and in accordance with the procedures provided in the municipality's procedural by-law. This is an optional provision and municipalities are under no obligation to enact a process to permit proxy voting.

Implications for Markham:

- At the August 5, 2020 Special Meeting of Council, City of Markham Council passed By-law 2020-81 to amend Procedural By-law 2017-5 to authorize continuation of electronic meeting participation for Council, committee, and local board meetings to satisfy public health authorities recommendations related to the COVID-19 pandemic.
- Specifically, Council enacted By-law 2020-26 to amend the Procedural By-law 2017-5 on March 27, 2020 to permit electronic meeting participation only during a "State of Emergency" but references to "State of Emergency" were deleted through By-law 2020-81 to ensure electronic meeting participation can continue even if a state of emergency is not in effect, as the province-wide emergency response to the COVID-19 pandemic was permitted to expire on July 29, 2020.

8. Other amendments include changes to the *Building Code Act*

Amendments to the *Building Code Act* will change the authority to make regulations from the Lieutenant Governor General to the Minister of Municipal Affairs. This would permit more timely action to respond to public safety issues.

The amendments also clarify the ability to make regulations that adopt documents by reference. The Minister may adopt a number of different documents, including but not limited to: the *National Building Code of Canada*, the *National Plumbing Code of Canada*, the *National Energy Code for Buildings*, and the *National Farm Building Code of Canada*. The opportunity to adopt model codes creates the possibility that building standards may become more consistent across provinces.

Implications for Markham:

- Overall model codes, as cited above do not reflect fundamental differences in building design or construction methods that are present across the provinces and in some areas the Ontario Building Code requirements exceed those under the model codes. It is difficult to estimate the implication or any impact to Markham as the proposal is vague and the particulars regarding which reference documents will be adopted is unknown.

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- In the past, the Ministry of Municipal Affairs and Housing held public consultation sessions pertaining to proposed building code changes to understand the global impact within the development community. Public consultation included comments from Building Officials, members of council, professionals and developers. It is unclear if this valuable process will continue under the current proposal. If eliminated the public will not have any input on planned Building Code changes by the Province of Ontario.
 - Amendments to building code legislation, including the adoption of other model codes will require extensive re-training of all Building Department technical staff and may require changes to departmental operating procedures. Depending on the scope of the amendments, this could represent a substantial amount of resources.
 - Amendments to building code legislation may also impact the receipt of applications and timing related to the effective date of the changes, which in turn may affect development growth projections within Markham.

NEXT STEPS:

Staff will continue to monitor the implementation of Bill 197. It is anticipated that draft regulations related to the amendments (e.g., new CBC regulations) will be released for comment, although timing is not yet known. Staff will report back to Council on associated regulations as they are released.

FINANCIAL CONSIDERATIONS:

Overall, Bill 197 is an improvement over the Bill 108 proposed financial landscape. Markham will now be able to collect more DCs as a result of the elimination of the 10% mandatory discount on soft services. Markham should also be able to collect parkland and cash-in-lieu at rates that will maintain existing service level provisions. Markham will be able to fund growth-related projects, not covered under DCs or Section 42 of the *Planning Act*, through a community benefits charge. The exact financial impact of all of these changes cannot be quantified until the City passes CBC and parkland by-laws. However, the Province has put positive measures in place to improve the financial implications of growth on municipalities.

Staff are identifying funding requirements for studies that will need to be undertaken in order to implement the requirements of Bill 197 within the stated timelines.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

This report relates to the Safe and Sustainable Community priority of Building Markham's Future Together.

BUSINESS UNITS CONSULTED AND AFFECTED:

All affected City departments have been consulted in the preparation of this report.

RECOMMENDED BY:

Trinela Cane, Commissioner of
Corporate Services

Arvin Prasad, Commissioner of
Development Services

Claudia Storto
City Solicitor and Director of Human Resources